

CHIEF OF DETECTIVES

NOTICE

8.4

July 1, 2009

TO: All Commanding Officers

FROM: Chief of Detectives

SUBJECT: FEDERAL PROSECUTION OF CRIMINAL ALIEN GANG MEMBERS

PURPOSE

The Los Angeles Police Department (LAPD), the United States Attorney's Office (USAO), and the United States Immigration and Customs Enforcement (ICE) have collaborated to investigate and serve Federal warrants on criminal alien gang members in violation of United States Code (USC), Title 8, Section 1326 (a): Illegal Alien Found in the United States Following Deportation (§ 1326).

Note: For the purpose of this Notice, a criminal alien is defined as a person with a felony conviction who is not a natural-born or naturalized citizen, or a national of the United States.

The Los Angeles County District Attorney (LACDA) and the Los Angeles City Attorney (LACA) are collaborating with the USAO and ICE to target and prosecute undocumented criminal alien gang members who have illegally entered the United States following deportation. Gang prosecutors from the LACDA and LACA have been cross designated as Special Assistant United States Attorneys (SAUSA) and have requested the LAPD's assistance with investigations of § 1326 violations.

This Notice establishes protocol in pursuit of §1326 prosecutions and is consistent with Special Order 40, "Undocumented Aliens" dated November 27, 1979, which states officers shall not initiate any police action where the objective is to solely discover the alien status of a person, and shall not arrest nor book persons for violation of USC §1325, Illegal Entry, or any other immigration crime without a Federal Warrant.

Note: USC §1325 specifically deals with illegal entry; whereas, §1326 refers to an undocumented alien found in the United States following deportation.

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Title 8 USC Section 1326 (a)

To prosecute a § 1326 case, the following must be proven:

1. The defendant, an alien, was lawfully deported or removed from the United States; and,
2. After the defendant's deportation or removal, the defendant voluntarily entered the United States; and,
3. At least one of the defendant's deportations occurred after the defendant was convicted for an aggravated felony.

Prior deportation information can be obtained from ICE's Alien File (A-File). A-Files contain immigration records for aliens admitted to or found in the United States and frequently contain photographs, fingerprints, court records of conviction, and records relating to deportation.

INVESTIGATION PROCEDURES

To refer a suspect for §1326 prosecution, the following investigative steps are required:

1. **Determine whether the suspect was previously deported, or removed from the United States.**
 - Check the suspect's criminal history information in CCHRS, CII and/or FBI criminal arrest records for indicators of prior removals, or deportations.
2. **Determine whether the suspect has an Alien Registration Number (ARN).**
 - An ARN is an indicator that the suspect has had some contact with ICE, and may have been previously deported.
3. **Determine the status of the suspect in the United States.**
 - Determine if the suspect is in custody. If the suspect is not in custody, determine whether the suspect has recently (past six months) been arrested, cited for an infraction or misdemeanor offense, or whether the suspect had any contact with the police, which was documented on a Field Interview Card.
4. **Determine whether the suspect was previously convicted for an aggravated or serious felony offense.**
 - "Aggravated Felony" is a term that includes, but is not limited to: crimes of violence such as murder, rape, ADW, robbery, carjacking, domestic violence, burglary of a residence, and other crimes where there is an intentional use of force or substantial risk of physical harm. It also includes narcotic crimes with a trafficking component (even where the sentence was less than a year), and firearms offenses and thefts/receiving stolen property cases where the sentence is more than one year.
 - A serious felony would be a felony offense for which the suspect was sentenced to substantial jail time or prison.

5. Provide documentation that indicates the suspect is a gang member.

- Although gang membership is not an element of the offense, gang members represent the primary targets in the cases prosecuted by SAUSA's from the LACDA and LACA offices.
- The USAO will prosecute all potential offenders of § 1326, regardless of gang membership, provided the cases meet USAO filing standards.

Officer's Responsibilities

When an officer believes a suspect is in violation of §1326, he or she shall obtain the following information:

- Suspect's name and date of birth;
- Suspect's statement;
- Suspect's previous deportation information;
- Description of the suspect's tattoos;
- Gang affiliation as determined solely through original source documentation such as FIs, arrest or crime reports;

Note: Determination of gang affiliation shall not be made based on information derived from any criminal intelligence system protected by Title 28 Code of Federal Regulations Section 23, nor shall reference be made to such databases which serve as pointer systems to original source documents.

- Copies of the suspect's CCHRS, CII, and FBI criminal arrest records;
- Copies of Field Interview Cards (FI);
- Copies of arrest and crime reports (if applicable);
- Officer's statement of facts pertaining to §1326 violation; and,
- Any other supporting documentation or evidence.

The officer shall complete the attached Gang Member Referral Form (GMRF), attaching copies of all documentation obtained and submit to his or her supervisor for review and approval.

Upon approval by a supervisor, the officer shall transmit the GMRF, along with documentation, to the USAO.

Supervisor's Responsibilities

The supervisor shall review the GMRF and supporting documentation to ensure investigative procedures have been completed and meet the criteria for submission to the USAO. Upon approval, the supervisor shall document by his or her signature, their serial number and date approval was given and direct the officer to transmit the GMRF and documentation to the USAO.

Filing by the USAO

The USAO, along with ICE, will complete a §1326 investigation and, if the case meets the USAO filing guidelines, charges will be filed for violation of §1326 and a Federal arrest warrant will be issued. The USAO will provide the warrant information to the LAPD for enforcement assistance.

Referral Contacts

- United States Attorney's Office
 - Jennifer Resnik (DCA): (213) 894-4138 or Jennifer.Resnik@usdoj.gov
 - Jacob Yim (DDA): (213) 894-6875 or Jacob.Yim@usdoj.gov
- Immigration and Customs Enforcement
 - Command Center: email LAICECAP@dhs.gov (checked hourly)
 - Law Enforcement Support Center (LESC): (802) 872-6050 (24/7)
 - Emergency Contact: (213) 830-4925 (For use if the release of a criminal alien suspect is imminent).

The protocol established in this Notice is to be used only against criminal aliens who have proven to be a threat to the community, and not against individuals who are merely undocumented aliens. The Department will continue to provide police and protective services equally to all community members of Los Angeles, regardless of their alien status.

If you have questions concerning this Notice, please contact Lieutenant Emmanuel Hernandez, Gang and Narcotics Division at (213) 485-5528.

APPROVED:



CHARLIE BECK, Deputy Chief
Chief of Detectives



JIM McDONNELL, First Assistant Chief
Chief of Staff

Attachment

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LOS ANGELES POLICE DEPARTMENT

GANG MEMBER REFERRAL

DATE:

TO: JENNIFER RESNIK, Special Assistant U.S. Attorney
Domestic Security and Immigration Crimes Section (13th Floor)
PHONE: (213) 894-4138
FAX : (213) 894-6436

From: OFFICER/DETECTIVE _____
Division _____ Serial # _____
Phone _____

Name Used	
DOB	
ARN#	
CII	
Arrest/ Filing Charge	
Prior Felony Conviction	
In Custody?	
GANG	

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PROSECUTING GANG MEMBERS AS ILLEGAL ALIENS

I. 8 U.S.C § 1326: ILLEGAL ALIEN FOUND IN THE UNITED STATES FOLLOWING DEPORTATION

- a. Suspect is a criminal alien
- b. Suspect **has been deported** from the U.S.
- c. Suspect has been **seen/found in Los Angeles** following deportation

II. INFORMATION NEEDED FOR REFERRAL

- a. Name
- b. DOB
- c. CII/ FBI (and ARN or A-File # if available)
- d. Gang Affiliation (and indicia of gang membership if available)
 - i. Admissions
 - ii. F.I.s
 - iii. Tattoos
 - iv. Other Supporting Evidence

III. CONTACT INFO

- a. U.S. Attorney
 - i. Jennifer Resnik (DCA): (213) 894- 4138 or Jennifer.Resnik@usdoj.gov
- b. ICE
 - i. Command Center
 - Email: LAICECAP@dhs.gov (checked hourly)
 - Emergency Contact: (213) 830-4925 (for use if release of alien suspect is imminent)
 - ii. Law Enforcement Support Center (LESC): (802) 872-6050 (24/7)